**Minutes for August 3, 2012 SWGCOG Board meeting**

**Anasazi Room, La Plata County Courthouse**

**1:30 pm to 3:30 pm**

**Members Present:**

Tom Yennerell, Town of Mancos

Shale Hale, City of Cortez

Ron LeBlanc, City of Durango

Ernie Williams, Dolores County

Dick White, City of Durango

Greg Schulte, Archuleta County

Willy Tookey, San Juan County

David Mitchem, Town of Pagosa Springs

Bryce Capron, Town of Dove Creek

Jason Wells, Town of Silverton

**Guests:**

Ken Charles, DoLA

Troy Ralstin, Ute Mountain Ute

Joe Kerby, La Plata County

**Staff/Consultants:**

Susan Hakanson

Laura Lewis Marchino

Ed Morlan

Dr. Rick Smith

Paul Recanzone

John Ehmann

**Call to Order & Introductions:** The meeting was called to order at approximately 1:30 p.m. by Tom Yennerell, Chair. A quorum was present. Introductions were made by those present and those on the phone were also recognized.

## Consent Agenda: The Consent Agenda consisted of Board Meeting Minutes for Friday, July 13, 2012 and the Financial Report for June. Willy Tookey made the motion to approve the consent agenda with the requested correction to the minutes and it was seconded by David Mitchem. The motion passed, with all those voting in favor.

**Reports:**

1. **Telecommunications Report**

**General Manager Report**

Dr. Rick Smith indicated he recently had a useful meeting with several parties in Dolores County. They have the IGA and are meeting with their attorney about it. No update on the IGA for Rico.

**Community Updates**

Greg Schulte noted that he, David Mitchem and Paul Recanzone met with USA Communications and the local governments anticipate finalizing an agreement to purchase fiber from them. USA Communications already had plans to trench and lay fiber and it appears they are willing to sell and lay fiber for this community’s part of the SCAN Project. Several community anchor institutions have agreed to join the effort.

**Responsible Administrator’s Report**

Ed Morlan reported that there have been some recent DoLA grant reimbursements for construction and he is dispensing the checks back to those governments.

**Tele-Com Committee Chair Report**

Jason Wells said the Club 20 telecom committee discussion went well and it is still anticipated that Club 20 will host a public summit on the topic in the near future.

**Minutes of Joint Executive & Administration Committee meeting**

There were no questions or comments about this item. **Packet Item 2a**

**Discussion- COG recommended excavation policy**

Paul Recanzone looked at ordinances around the country and is suggesting that the COG encourage local governments to adopt a excavation policy that requires cooperation on telecommunications infrastructure excavations, if such policy is not already in place. Susan Hakanson asked Board members to disregard the specific resolution in the meeting packet. John Ehmann asked if the example of USA Communications’ cooperation with excavation in Archuleta County would be useful to note to EAGLE-Net. Paul said it would, but that the tightness of cooperation with USA Communications far exceeded what he could hope for with EAGLE-Net. He wants to get EAGLE-Net to put SCAN conduit in the same trench. So far EAGLE-Net won’t put in sectioned conduit or anything in the same trench, saying that it violates federal standards. Ed noted that Darlene Tipton of Congressman Tipton’s office wrote EAGLE-Net on this topic and got a similar response. Paul considers EAGLE-Net’s preference to use different trenches but the same contractor as unacceptable and it would add considerable cost to the SCAN Project. David Mitchem suggested making a COG Board recommendation to local governments to adopt the excavation policy in the draft resolution. Ron LeBlanc noted that a home rule government the City Engineer is the controlling officer for excavation policy in Durango so Council consideration is not really appropriate there. Jason Wells supported making a COG Board recommendation to local governments so he has a specific statement to bring to his Town Board for consideration. **Jason Wells moved to adopt the Excavation Policy Resolution and David Mitchem seconded.** Ron raised some concerns about the wording with regard to rights of way. Paul recommended each government consult their legal counsel. There was further discussion with regard to aerial construction. It was noted that the resolution is just a recommendation and local governments can modify the wording as they deem appropriate. **The motion passed, with all those voting in favor.**

**Letter to Pueblo Community College**

A letter was received from the college raising concerns about the design & budget but not indicating a decision to participate in the project or responding to the invoice presented. Ed recommends waiting until the previously given September deadline and then re-allocating their funding to un-allotted and then undertake a re-allocation process to use it for other purposes. Ron noted the college can still join in the future if they find new funding. Greg asked if we expected a further answer from the college between now and September. The response was no. He indicated he preferred to re-allocate and spend the time between now and September on the re-allocation process. Shane Hale agreed. Jason said he thought there was already a tiered approach to re-allocation. Paul replied that such a re-allocation process was developed and discussed but not formally adopted; and that this would also be a re-allocation within a tier. Ed indicated he planned to move the money to unallocated in the budget being prepared for presentation at the next Board Meeting and the Board could officially act on this issue as part of adopting that budget. **Greg moved that, given the information received, the funds for the Pueblo Community College and the accompanying match be moved to a contingency line item and subject to policy discussion and re-allocation by later Board action and Chris La May seconded.** Dick White asked if a formal offer of participation is out there to them until Sept. 1 and expressed concern about taking other action before that date. Shane recommending accepting the letter received as their response, well before the deadline for such response. They have not accepted participation in the project, indicated that it is in their budget or responded to the invoice sent. If further communication was received, the Board could reconsider if it wished. **The motion passed, with all those voting in favor.**

**General Manger Services Contract**

Jason explained that the hiring committee had met with Dr. Rick Smith to review his proposal for extending the General Manager Services contract. The committee was not comfortable with undertaking a performance review but it did find the continuation of the position necessary for the progress of the project. Greg asked about the statement in the resolution that the funding of the contract extension would come from project savings. John clarified that he wrote that statement based on discussion of the telecom budget that showed savings in certain telecom items, most notably in large line item for MSC project management. Laura Lewis Marchino confirmed the savings compared to budget in certain telecom line items. Ed explained his plan to move dark fiber leaser revenue to the operations budget and use it to help finance operational expenses for the rest of the year. Greg expressed his continued reservations about authorizing $20,000 in new expenditures for GM Service at this time based on this level of information about available funding. Bryce Capron noted the importance of reaching out to all the possible participants in the project in all of the communities. Jason shared this interest. Chris La May suggested a one month extension and revisiting the matter in September. Dr. Rick explained that his work to fulfill the existing contract runs thru August. 10. He is agreeable to a 4 month extension and then working pro-bono for the end of December. Greg said he liked Chris’ idea for a one month extension right now and then re-visit the topic again in September. Shane Hale indicated he also supported the approach. Dr. Rick indicated he is amenable to this proposal**.** Ed and Laura noted that one of the main tasks in the next month will be to coordinate on the SCAN operation budget. **Greg Schulte moved that the COG make a one month extension on the GM services contract with Arona Enterprises from August 11 to Sept. 10 for $5,000 and Shane Hale seconded it.** Dick White suggested that the COG have a contingency plan if the COG doesn’t further extend the contract. Tom said the group would come back to the topic of a contingency plan. **The motion passed, with all those voting in favor.**

Jason Wells reiterated that there wasn’t a system in place for a performance evaluation and asked if the COG Board wanted to do something with that before the next extension decision. He said a process is needed generally in future for reviewing any positions or contracts. Tom, Shane and Bryce agreed that there is a need for such a process with Bryce suggesting it could be done via a handout to Board members who could comment based on their community’s experience to date. Susan Hakanson said that she can prepare a matrix showing how such reviews could be done and for this case it should be based on the original contract. Ed said that he prepared a list of review items based directly off the original workplan for this review but the hiring committee wasn’t comfortable using it. Susan agreed that outcomes need to be considered, and that perhaps a version of such a list could be synthesized down and perhaps used at Board level. Tom indicated that there was consensus to have Susan develop an evaluation process that be used generally and in this case. Ed noted that in the GM Services proposal were was mention of other options for running the SCAN operations at some point (thru services provided from member governments) and that was one way the Board could look to go if it needed a contingency plan. Shane said that it is likely that we will face crossing this bridge at some point whether it be right away, in 2013 or later. Tom asked Dr. Rick if he agrees on work with Ed on the operating budget and Dr. Rick responded affirmatively.

Jason emphasized the need for gaining internal agreement on the importance and extent of community marketing and outreach, even though it was not included in the contract extension motion. Greg recalled past agreement based on the law not to market direct service to non-profit organizations. Jason agreed with that recollection but indicated he still perceived some disconnect on who the project would offer service to. In response to Jason’s question to him, Ed indicated that he too believed there were some differences between what he is hearing and understanding from Dr. Rick and what he has understood with regard to what the project would be selling and who would be served. Greg said this was a policy matter that needed some finality and that a recommendation needed to come from staff. Shane asked if the disagreement was about serving schools. Ed said he has always understood that the SCAN project is to provide service to the schools. He further noted that Dr. Rick had shared concerns about serving schools in recent discussions with him and asked Dr. Rick to share more about his viewpoint with the Board. Dr Rick said that you can bring fiber or a connection to community institutions with fiber that you own; but, in his opinion, beyond that you move toward a grey area where you can’t say you are going to offer or directly provide service to them. He said that you can say that you are going to aggregate demand for services (such as internet) and give community organizations such as schools (or others) the option to participate in that aggregation of demand. He indicated that he anticipated a lot of issues with private providers if they hear that we are going to customers and offering to provide services. He indicated that EAGLE-Net created problems for themselves when they did that and he recommends we avoid that. We would aggregate demand and if some governments or institutions wanted to use another even cheaper option available to them they could. Ed said you can’t force anyone to buy anything, but he didn’t believe it was accurate, based on research that Paul has done, that we can’t sell services. His understanding is that you can. Tom asked Paul to respond as well. Paul said that based on his reading on the law and talking with others (i.e., Erik Cecil and Ken Fellman) any services that you offer to a member government agency can be offered to other entities defined as governmental entities under the law but not to non-governmental entities. Ed reminded the Board that the COG paid Ken Fellman for a legal opinion on this very question. Paul indicated that the explanation he just gave was based on that opinion. He believes we are within the law to offer a suite of services in exchange for some kind of payment to any DoLA recognized local government entity or jurisdiction. He said, we can build the infrastructure out to them and offer them services. He did agree that we would run into some frustration from private service providers who believe we are potentially taking revenue away from them. But he said that concern already exists as we will take revenue away from them for services that our member governments can provide for themselves. He said we need to emphasize ways that the project can generate revenues to them from other services that they can provide using some of our infrastructure. Rick indicated that if you use this language and approach that the private providers will raise SB 152 objections; but he doesn’t think they can effectively make that objection if you use the aggregation of demand language because they still have the opportunity to potentially provide that service. He said he thought provider opinions can shift and get more critical as you move further down the implementation timeline and they look at things differently based on what they see happening.

Shane said it almost sounded like the difference of opinion was mostly semantics over the packaging and delivery of services. Ed agreed that the difference was over packaging, delivery and marketing and his concern was that Dr. Rick had such a conservative fearful perspective about selling these services that he doesn’t think Dr. Rick will be as aggressive in selling services as Ed thinks he should be. Greg asked that the legal opinion on this topic be re-distributed to the Board. He added that the COG previously took a conservative stance and decide not to serve non-profits because there was no way the COG could persevere thru a legal battle with Century Link or another major provider. He recommended that everyone look back at that legal opinion and make an assessment of our legal standing to offer services.

Susan said there is a broad research effort underway to review past Board telecom conversations and identify what was decided and what was just discussed without a decision. She also noted that Dr. Rick’s draft business plan projects to be the black without serving the schools and other community anchor institutions. She anticipates bringing the results of that research to the Board in September to help the Board understand of where they are and where they are going.

Bryce said that a larger customer base can make things more attractively priced and provisioned for everyone. John asked if, under the different visions of what could or should be sold, whether differential prices could be charged to member governments who built and partially financed the system and other users who did not participate in this way. Ed said he didn’t know at this time. Dr. Rick didn’t think you could have pricing based on general pricing tiers as the scenarios for community participation and local matching varied across the region; so he anticipates using flat fee pricing with the necessary administrative overhead charge. Tom indicated that the issue would go back to staff for further work and that it can be brought back to the Board later. He said it was time to move forward with the rest of the agenda.

**B. Management Report**

There are signed copies of the full final audit report that were submitted to the state available if anyone wants one.

There are no longer plans to meet with the Governor about the SCAN project or anything else when he visits the area later this month. Ken Charles agreed with that decision, if there is nothing we are ready to highlight at this time.

Susan briefly noted some of the strategic discussions she is having with potential partner agencies and Montezuma County about some feasible ways to collaborate in the near future. Shane asked if we would be willing to consider stretching beyond our regional boundaries to collaborate with Region 10 on GIS services. Susan said she was open to the possibility of coordinating with them. Shane said that the concept of aggregation of demand might be appropriate for the purchase of GIS services if a private specialist were used. It has been used with other COGs.

**Decision- COG Dues**

Susan asked the Board to consider raising the dues to try to maintain current operations and facilitate exploration of service expansion opportunities. It would also give us something to use to try to get matching funds from DoLA and other sources. In responding to Shane question, Susan said the proposal is to raise dues to twice the current rate. She raised the possibility that organizations that donate in-kind staff services might in the future get some sort of credit towards their dues obligation. David Mitchem indicated that he had raised the possibility of a doubling of dues with his Board and they did not object. He said this organization is worthy of stronger financial support and he indicated that it should be done. Susan said that it was important to understand both the SCAN project and the general operations and how it all adds up. **David Mitchem moved that the dues for 2013 be twice the current rate.** Greg wanted more time to broach the subject with all of his Board and Joe Kerby asked that the item be deferred until next meeting so that his organization could have a voting member present to participate in the voting. Out of respect for the concerns, **David withdrew his motion**. Ron noted that the largest members are paying about 30 cents per capita. Shane said he was paying 4 times as much for a smaller government in another COG. Ron recommended that if other members join the COG in the near future that their dues should be seen as additional funding at a parity level and we should not go back and make reductions for other members.

**Announcements-**

Ken Charles gave some further explanation about how the energy impact grants would be run. At least $25,000 grant opportunities will be available with dollar for dollar local match requirements. Pure administrative requests will not be funded. The funding is for specific projects. Shane spoke to DoLA Director Reeves Brown and stressed the importance of this funding source.

The next regular Board meeting will be held Friday Sept. 7, 2012 from 1:30 pm to 3:30 pmat the La Plata Courthouse.

**Adjourn-** **The Chair adjourned the meeting by consensus at about 3:30 p.m.**

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